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MEMORANDUM FOR: See Distribution

FROM:

Office of Legislative Liaison

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VIA:

Chief, Liaison Division, OLL

SUBJECT:

DOD Proposed Alternative Pay Plan

1. Attached hereto is a copy of a DOD draft bill (and the sectional analysis) that proposes an alternative pay plan for Federal civilians. In essence, a pay banding system is proposed for scientific and technical positions that are hard to fill.

2. This is the bill that the DOD gave to Senator Dole a few weeks ago with much fanfare in the press. It has not been introduced and no action is planned at present. Nonetheless, many groups, including OPM, DOD and the House Post Office/Civil Service Committee, are eager to explore ways to modify the Federal pay system and I anticipate that hearings will be held next year.

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Attachments: as stated

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SECTION ANALYSIS

To accompany a bill to amend Title 5, United States Code, to establish alternative Federal personnel management systems and for other purposes.

The first section provides a title, "The Alternative Federal Personnel Management Systems Act of 1985."

Section 2.

The second section amends title 5 by inserting a new chapter allowing agencies to establish personnel management systems which adjust pay to reflect job performance and effectiveness. This chapter requires that the Office of Personnel Management approve employee coverage under such a plan and provides definitions for "agency," "employee," "pay band," "career path," "performance", and "compensation". The definition of "pay band" is any range of pay reflecting difficulty of work performed, subject to the statutory pay limit of 5 USC 5308. Establishment of such a compensation system is subject only to the requirements of this chapter and regulations of OPM, notwithstanding any provisions of chapter 71 of this title.

a. Each system established by an agency must: identify separate career paths for groups of occupations or professions; establish job evaluation plans; define pay bands; establish a method for determining pay rates; take into account the principle of equal pay for substantially equal work; and use performance appraisals and other pre-established factors as the basis for pay adjustments.

b. Conversion procedures are established which:

(1) Require a written notice to employees to be covered by an alternative system and guarantee that the conversion will cause no loss of pay.

(2) Continue existing within-grade increases until the first performance pay adjustment under the new system and give employees a lump sum pro-rata share of an earned step increase at the time of the first performance pay adjustment following conversion.

(3) Provide that employees receive the full comparability pay adjustment which occurs prior to the first performance pay adjustment following conversion.

(4) Allow agencies to establish other conversion procedures, as necessary.

(5) Require termination procedures to be included in the plan.

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c. Specific scientific and technical positions may be designated as requiring specially qualified personnel. No more than 5 percent of the total number of scientific and technical positions covered by an alternative personnel management system may be so designated. The positions would be placed in the excepted service and appointments to such positions could be made without competitive examinations. The maximum rate of basic pay for such positions would be the highest rate payable to the head of a Government-owned, contractor-operated national laboratory.

Section 3.

This section amends sections of title 5 to accomplish the following:

(1) Reductions from one pay band to another under an alternative personnel management system due to less than fully satisfactory performance are excluded from the written notice requirements of section 4303(b) of title 5. Such actions are also not appealable to the Merit Systems Protection Board.

(2) Exclude employees under this chapter from coverage under chapter 51.

(3) Amend section 5363 of title 5 to provide that pay retention for employees covered by an alternative personnel management system shall be as provided under agency regulations.

(4) Add chapter 56 to the table of chapters for part III of title 5.

Section 4.

This section authorizes continuation of existing Demonstration Project, including all the current system features, at the Naval Ocean Systems Center and the Naval Weapons Center.

Section 5.

This section provides that the Act take effect on the date of enactment.

DOD
11/15/85

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A BILL

To amend title 5, United States Code, to establish alternative Federal personnel management systems and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in the Congress assembled, that this Act may be cited as the "The Alternative Federal Personnel Management Act of 1985."

SEC. 2. Title 5, United States Code, is amended by inserting after Chapter 55 the following new chapter: "CHAPTER 56 - ALTERNATIVE FEDERAL PERSONNEL MANAGEMENT SYSTEMS

"SEC.

"5601. Purpose.

"5602. Definitions.

"5603. Requirements for alternative Federal personnel management systems.

"5604. Regulations; system approval and oversight.

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"5605. Conversion to alternative Federal personnel management systems; procedures.

"5606. Special salaries for scientific and technical positions.

"S5601. Purpose

It is the purpose of this chapter to promote better personnel management by permitting departments and agencies to establish alternative personnel management systems that set and adjust pay consistently to reflect qualifications, job performance and effectiveness.

"S5602. Definitions

(a) "For the purpose of this chapter --

"(1) "agency" has the meaning set forth in section 5102 of this title and includes military departments;

"(2) "employee" has the meaning set forth in section 2105 of this title and includes members of the Senior Executive Service, but does not include individuals employed by Government controlled corporations;

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"(3) "pay band" means any range of pay reflecting difficulty of work performed, Subject to the statutory limit on Federal pay set in Section 5308 of this title.

"(4) "career path" means a grouping of occupations or professions which are sufficiently similar to warrant similar treatment in personnel and pay administration.

"(5) "performance" means an employee's accomplishment of assigned duties and responsibilities.

"(6) "compensation" means all pay, awards, differentials, and benefits, except for compensation for work injuries as authorized in chapter 81 of this title and civil service retirement as authorized in subchapter III of chapter 83 of this title.

"5603. Requirements for alternative Federal personnel systems

(a) Subject to authorization by the Office of Personnel Management, an agency may establish one or more personnel management systems in accordance with the purpose set forth in section 5601 of this title. Initial coverage of such systems shall be limited to professional scientific and engineering occupations. Subsequent extension to other occupations within an agency is subject to the approval of and under such conditions as may be prescribed by the Office of Personnel Management.

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(b) Each agency which establishes one or more systems under subsection (a) of this section must specify an individual by title or otherwise who shall have exclusive authority and responsibility to make determinations about the matters specified in this section subject only to the requirements of this chapter and regulations of the Office of Personnel Management, as may be required, notwithstanding any provisions of chapter 71 of this title.

(c) Each system shall be subject to the requirements of this chapter and implementing regulations and procedures of the Office of Personnel Management.

(d) Subject to the approval of the Office of Personnel Management, each alternative personnel management system shall --

"(1) identify separate career paths for groups of similar occupations or professions;

"(2) establish job evaluation plans responsive to the needs of the system;

"(3) define pay bands;

"(4) establish a method for determining pay rates within the limits set by OPM regulations;

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"(5) take into account the principles of:

(i) equal pay for substantially equal work;

(ii) pay distinctions for substantial differences in difficulty, responsibility, qualification requirements and special conditions of employment;

(iii) pay distinctions based on performance appraisal and other pre-established factors."

"(6) provide that notwithstanding any other provision of law, the standard for review of any agency action under this chapter shall be that the action is supportable by substantial evidence and that the action must be sustained unless an employee contesting such action shows harmful error in the application of the agency's procedures in arriving at such decision.

(e) The funds available to the head of the agency under this section for the purposes of performance cash awards and establishing individual rates of basic pay for any fiscal year shall be determined on the basis of the amount estimated by the agency and approved by the Office of Personnel Management as necessary to approximate, unless an alternate procedure and amount is requested by the agency and approved by OPM --

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"(1) within-grade step increase and quality step increase that would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the alternative personnel management system if the employees were not so covered;

"(2) adjustments under section 5305 of this title that would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered;

"(3) the rate of increase which would have been paid on promotion under section 5334(b) of this title to the employees who would have been promoted from one General Schedule grade to a higher one if the employees were not so covered; and

"(4) performance awards provided by subsection 4503(1) of this title.

(f) An employee whose salary falls below the minimum of the pay band because of a failure to receive pay increases due to performance will be placed in a position in the next lower pay band.

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(g) For the purpose of section 5941 of this title, rates of basic pay fixed under this chapter shall be considered fixed by statute.

(h) Notwithstanding any other provision of law, an individual's selection for appointment to a position covered by an alternative personnel management system pursuant to this chapter shall become final only after the individual has satisfactorily served a probationary period of 3 years in accordance with regulations prescribed by the Office of Personnel Management. An employee who has previously begun a probationary period in the competitive or excepted service is not required to serve a new probationary period under an alternative personnel system.

"5604. Regulations; system approval and oversight

(a) "The Office of Personnel Management shall prescribe regulations within six months of enactment of this bill to carry out the purpose of this chapter and shall review and approve each personnel management system proposed by an agency under this section to determine whether the system meets the requirements of this chapter.

(b) The Office of Personnel Management shall establish policy and procedures for interrupted service and for overtime

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pay, compensatory time, Sunday pay, holiday pay, standby or on-call pay and night differential pay.

(c) The Office of Personnel Management shall monitor the implementation of such personnel management systems and evaluate them to ensure compliance with the agency plan and with OPM regulations implementing this chapter. OPM shall have authority to require, with appropriate notification, that changes be made in a particular agency's system, and when an agency does not comply with such direction and its system is not operating in accordance with the purpose set forth in section 5601 of this title, to terminate a system, or component thereof.

"5605. Conversion to an alternative Federal personnel management system; procedures

(a) Each employee serving in a position at the time it is designated as being under an alternative system shall be given written notification, in accordance with procedures established by the agency, of such designation. The conversion will be accomplished with no reduction in base pay for the employee.

(b) Dollar salary increases equivalent to within-grade increase entitlements under section 5335 of this title will continue through the day preceding the effective date of an employee's conversion to an alternative personnel system. At that time, each employee serving at less than the tenth step of

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the former General Schedule grade will be given a lump sum pro rata share of the next increase which would have been due under Section 5335 of this title.

(c) Any increases authorized under section 5305(a) of this title which occur prior to conversion under this chapter will be given to each covered employee.

(d) Under regulations prescribed by the Office of Personnel Management, the agency shall establish procedures, as necessary, to accomplish the conversion of designated employees to the alternative personnel management system.

(e) Subject to approval by the Office of Personnel Management, each agency establishing alternative personnel management systems shall establish procedures for termination of such systems. The procedures shall delineate conversion to other appropriate personnel systems. Termination may be initiated by either OPM or the agency or both."

"5606. Special salaries for scientific and technical positions

The head of each agency may provide for the designation of specific scientific and technical positions within alternative personnel management systems established pursuant to this chapter, and primarily within Federal laboratories, as requiring the services of specially qualified scientific or technical

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personnel, including, executives, managers and supervisors. In so doing, the head of each agency shall provide for a method of making appointments to such positions without competitive examinations and of determining the annual maximum rates of basic pay for each position so as to make it competitive with rates existing outside of the Federal Government, including those rates in existence at Government-owned, contractor-operated national laboratories. Any such rate shall be fixed at not less than the rate of basic pay for Level V of the Executive' Schedule and not more than the maximum rate of basic pay payable to the head of a Government-owned, contractor-operated national laboratory. The number of positions within an agency designated as requiring the services of specially qualified scientific and technical personnel pursuant to this section shall number no more than five percent of the total number of scientific and technical positions covered by alternative personnel management systems in that agency. In addition, any position so designated shall be considered to be in the excepted service, as defined in section 2103 of this title, and is hereby expressly excepted from the competitive service as defined in section 2101 of this title. An agency which intends to establish positions under the authority of this section shall so indicate in its plan for an alternative personnel management system.

CONFORMING AMENDMENTS

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SEC. 3 Title 5 United States Code is further amended --

(1) in section 4303(f) --

(A) in paragraph (2) by striking out "or" at the end thereof;

(B) in paragraph (3) by striking out the period at the end thereof and inserting in lieu thereof, ", or"; and

(C) by adding at the end thereof the following new paragraph:

"(4) the reduction from one pay band to another of an employee covered by an alternative Federal personnel management system who fails to receive a pay increase due to marginal performance as provided under section 5603(f) of this title."

(2) in section 5102(c) --

(A) in paragraph (26) by striking out "or" at the end thereof;

(B) in paragraph (27) by striking out the period at the end thereof and inserting in lieu

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thereof"; or; and

(C) by adding at the end thereof the following: "(28) employees whose departments or agencies have included them in a system established under chapter 56 of this title."

(3) in section 5363 by adding at the end thereof the following new subsection:

"(d) In the case of an employee covered by an alternative personnel management system established under chapter 56 of this title, pay retention shall be as provided under agency regulations established to implement the system."; and

(4) in the table of chapters for part III of title 5, United States Code, by inserting after the item relating to chapter 55 the following new item:

"56. Alternative Federal Personnel Management Systems.....
.....5601"

EXISTING DEMONSTRATION PROJECT

SEC 4. The systems established as a demonstration project under section 4703 of title 5, United States Code, at the Naval

Ocean Systems Center, San Diego, California, and the Naval Weapons Center, China Lake, California, may be retained as alternative personnel management systems upon enactment of this Act.

EFFECTIVE DATE

SEC 5. The provisions of this Act shall take effect on the date of enactment.